

U.N. Judgment Day

by

ALICE WIDENER

American Coalition

AN ORGANIZATION TO COORDINATE THE EFFORTS OF PATRIOTIC, CIVIC
AND FRATERNAL SOCIETIES TO KEEP AMERICA AMERICAN

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I

PREAMBLE TO A RIDDLE

There was great surprise and indignation in the United States when the Administrative Tribunal, final legal authority of the United Nations, declared on September 1, 1953, that the dismissal of eleven American employees of the U.N. Secretariat had been "illegal." Under questioning by a Federal Grand Jury and a Senate subcommittee about Communist affiliations, subversive activities and/or espionage, the eleven Americans had taken refuge in the Fifth Amendment.

But the fact is that owing to legal and political maneuverings about which the American people apparently were kept in ignorance and deceived, the Tribunal could scarcely have acted otherwise. For a study of the record seems to make it evident that the now famous case of the so-called "Red Eleven"—as it is described in the press—was lost by the U.N. Secretary General and the U.N. Legal Department well in advance of the open hearings held before the Tribunal in July.

The actual date of this loss, it seems, can be traced back to the end of 1952 when Secretary General Trygve Lie, presumably surrendering to behind-the-scenes political pressure, began to renege on his public announcement of December 5th that he would abide by the legal findings of an internationally eminent Commission of Jurists, and thus bar from present and future employment in the United Nations any American national who is disloyal to the United States, the "host country."

The urgent need for such an agreement was brought to American public attention in the fall of 1952, when a New York Federal Grand Jury and the Subcommittee on Internal Security of the United States Senate Committee on the Judiciary revealed startling evidence of Communist activities and/or espionage conducted by a group of American employees of the United Nations.

Outraged at this situation, the American people and their Congress clamored for its rectification. But Secretary General Trygve Lie and the late U.N. General Counsel Dr. Abraham Feller seemed unable to determine whether certain provisions of the United Nations Charter and Staff Regulations, which guarantee privileges, immunities and rights of tenure for international civil servants in the Secretariat, preclude the dismissal of Americans from U.N. employment on grounds of disloyalty to their own government. Presumptive evidence of this disloyalty was recorded in their refusal to answer questions under oath on the basis of their right to refrain from self-incrimination.

In a quandary, Mr. Lie publicly announced that he would seek definitive advice concerning the complex U.N. personnel problems from a Commission of Jurists chosen by him from among Member States of the United Nations. The three lawyers who served on this Commission were Sir Edwin Herbert, former Director of Censorship in the United Kingdom, Mr. William D. Mitchell, former United States Attorney General, and Professor P. Veldekens, Belgian professor of international law.

Their forty-five page Report—as analyzed by the *New York Times* —“boils down” to the conclusions:

The United States, as host to the United Nations, had the right to insist that no person it considered disloyal or subversive be kept on the staff in this country. That went for non-Americans as well as Americans, except for nationals of Soviet bloc countries.

All active members of the Communist Party in the United States should be dismissed, as well as anybody who had been or was “likely” to be subversive.

No employee of the United Nations had the right to refuse to answer questions on the ground of possible self-incrimination; if he did, he should be dismissed. Mr. Lie had the right to dismiss any staff member on the loyalty issue.

On December 5, 1952, according to U.N. document A/2364, page 9, Secretary General Lie informed the governments of Member States that he had made the following statement to the staff concerning the opinion of the Commission of Jurists:

I have carefully studied the opinion they have presented. *I have decided to use the conclusions and recommendations of this opinion as the basis of my personnel policy* in discharging the responsibilities entrusted to me by the Charter and Staff Regulations of the United Nations . . .

It is my earnest hope that *on this basis* it will be possible for the United Nations and the host country by mutual efforts to maintain harmonious relationships on matters affecting the staff of the Secretariat which, in the words of the opinion, *'depend mainly upon a good understanding as to the necessities of the international organization and its staff on the one hand, and the necessities of the host country on the other'.* [Italics added.]

Not only Mr. Lie but also Assistant Secretary General Byron Price, an American in charge of U.N. Administrative Services, formally accepted the principal thesis of the Jurists' Report. In document 52-29713, dated December 11, 1952, Mr. Price informed the United Nations staff: ". . . decisions will be reached in an orderly way on the principles embodied in the report of the Commission of Jurists."

More important still, U. S. Assistant Secretary of State John D. Hickerson declared in an official statement issued to the Senate Internal Security subcommittee:

. . . Up to very recently, the Secretary General has not believed that he could discharge United States nationals on the grounds of their being disloyal to the United States.

. . . According to the press, the Secretary General has notified the staff of the Secretariat that *he has accepted and will be governed by the recommendations contained in the jurists' report.*

The Department of State believes the report points the way to a satisfactory solution of the whole problem. [Italics added.]

Thus it may be seen that the American people, the press, and high officials of the United States Government believed that a "satisfactory solution" of the U.N.-U.S. personnel problem in the Secretariat was effected in December 1952 on the basis of the Jurists' Report.

Its acceptance was thereafter incorporated in the preamble to President Truman's Executive Order 10422 of January 9, 1953, establishing the procedures, techniques and rules to be followed by the Department of Justice and Federal Bureau of Investigation in security and loyalty matters concerning U. S. citizens employed by the United Nations.

And so, when Secretary General Lie and the U.N. Administration subsequently reneged on acceptance of the Jurists' Report, the American people were confronted with a Yalta-like situation in regard to U.S.-U.N. personnel security agreements. For American faith in Mr. Lie's word seems to have been betrayed—though apparently nobody warned the American people of the grave consequences. As a result, the assurance that the U.N. Administration team would play the game according to rules set by an internationally acceptable umpire has proved to be false.

Once again there is a bitter truth concerning an international agreement entered into by the United States that is unknown to most Americans. *This truth is that within four months after announced acceptance of the Jurists' Report, its main principles were repudiated by Secretary General Trygve Lie presumably on the advice, or with the consent or knowledge, of the United Nations Legal Department.*

Therefore, the U.N. Administration actually discarded the theory that our country, as the host nation, can control the employment of its nationals in the U.N. Secretariat; and *today the United Nations considers itself entirely free to exercise its own discretion in hiring and retaining any American employee.*

Naturally, these facts had to be taken into account by the U.N. Administrative Tribunal last July when it heard the appeals from dismissal of twenty-one 5th Amendment American employees of the Secretariat. Ten of these had held only temporary or temporary-indefinite contracts with the U.N., and therefore could be dismissed by the Secretary General under existing Staff Regulations at his sole discretion if he deemed their dismissal "in the interest of the United Nations." But the facts concerning the repudiation of the Jurists' Report weighed heavily in the Tribunal's decision to order reinstate-

ment of, or indemnification and payment of damages to, the eleven 5th Amendment Americans who had held permanent employment contracts with the United Nations.

Concerning the Tribunal's decision, the *New York Times* reported:

Four of the eleven were ordered reinstated with full back salary. Seven others, who asked for payment in lieu of reinstatement, were awarded sums of \$6,000 to \$40,000. The payment of compensation, together with a token legal fee of \$300 in each of the eleven cases, will cost the United Nations at least \$135,000 . . .

Since the United States' share of the regular United Nations Administration budget is 35.12%, our country may be in the fantastic position of having to pay more than a third of the total sum awarded by the Tribunal to Americans about whom there is presumptive evidence of disloyalty to the United States.

At this time of writing, implementation of the Tribunal's order is on the agenda of the current session of the U.N. General Assembly. And the whole subject of U.S.-U.N. personnel security agreements is scheduled for debate by the U.N. Advisory Committee on Administrative and Budgetary Questions.

The United States Delegation, in presenting its views, would be wise to heed the opinion of the editors of the *New York World Telegram* and *The Sun* who stated:

. . . since the United Nations headquarters is located in New York, U.N. employees suspected of espionage activities against the United States are the legitimate concern of our government.

Satisfactory adjustments must be made between the U.N. and the United States government if the organization expects to maintain its headquarters in this country, and if the United States is to remain a member of that body.

The United States cannot tolerate a Communist cell in the heart of its greatest city . . .

Urgently, the American people need to be on the alert during the debate in the U.N. General Assembly and the Advisory Committee. The issues involve the sovereignty of the United States, its national and international security, the defense of its judicial system, and the

relationship of the Department of Justice and Federal Bureau of Investigation to United States citizens in the employ of the United Nations.

Whatever is the result of this vital debate, Americans must know that the main provisions of the Jurists' Report lie at the heart of U.S.-U.N. personnel security matters. Americans must also grasp the fact that their belief concerning acceptance of the Report was founded on a delusion imposed on us by Secretary General Lie and the U.N. Administration. Also, it is necessary to realize that this delusion appears to have been fostered and heightened by our own State Department which seems to have misled or misinformed both ex-President Truman and President Eisenhower who incorporated the misconception in executive orders issued from the White House.

* * *

II

THE JURISTS' REPORT

The main thesis of the Report issued November 29, 1952 is that a peculiar relationship exists between the United Nations and the United States as "the host country." In reply to Secretary General Lie's five legal questions concerning U.N. staff members of U. S. nationality, the three lawyers declared that these questions "*all arise*" out of the special U.S.-U.N. relationship. A brief illustration of this is that except for the United States, *all Member States of the United Nations can control their nationals' travel to its headquarters in New York City through the issuance of passports.* But because the headquarters are where they are, Americans don't need passports to go there.

For obvious reasons, this circumstance greatly handicaps U. S. security control, a fact officially recognized by the U.N. Administration, which informed the State Department, December 23, 1952:

... the Secretary General was keenly aware of the seriousness of the problem presented by the presence in the Secretariat, within the borders of the United States, of American citizens which

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their Government felt it had grounds to suspect of subversive activities.

This would be a serious matter for the United Nations in any country where its Headquarters chanced to be located. It has been customary in all countries where personnel is stationed to seek as much information as possible from the national authorities. For example, several hundred French nationals were employed temporarily in Paris during the 1948 and 1951 sessions of the General Assembly there, and in every case a prior check was made with the French authorities.

Another principal decision taken by the Jurists was based on their consideration of the Constitution of the host country. They explained that the 5th Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself." The lawyers further expressed the opinion: "If in reliance upon this privilege a person refuses to answer a question, he is only justified in doing so if he believes or is advised that in answering he would become a witness against himself. In other words, *there can be no justification for claiming this privilege unless the person claiming the privilege believes or is advised that his answer would be evidence against himself of the commission of some criminal offense.*" [Italics added.]

A third main principle embodied in the Commission of Jurists' Report is that *no termination indemnities need be paid to permanent or temporary jobholders in the U.N. Secretariat whose dismissal is based on a charge of breach of duty to the United Nations or a charge of "serious misconduct."*

In disregard of this third principle, however, and in violation of a U.N. Staff Regulation expressly forbidding payment of termination indemnities to employees guilty of serious misconduct, Mr. Lie dismissed eleven 5th Amendment Americans holding permanent U.N. contracts (against whom there is presumptive evidence of involvement in the commission of some criminal offense) *but awarded them indemnities.*

This outrageous award, which the U.N. Legal Department later described with a straight face as "an act of grace," was made by Mr. Lie on December 5th, *the very same day* he publicly accepted the

Jurists' Report. And whether or not he acted on the advice or with the consent or knowledge of U.N. legal counsel, the fact is that he thus brought into question the entire validity of the charges against the eleven Americans that they were guilty of a breach of duty to the United Nations involving serious misconduct.

As a result, the questions may be asked: "If these people were guilty, then why pay them indemnities? And if it was right to pay them indemnities, then were they really deemed guilty?"

Soon there was more obfuscation of the Jurists' lucid report.

On December 16, 1952, only eleven days after the Secretary General accepted it, several high officials of the United Nations engaged in what appears to be a crossed-fingers, tongue-in-cheek interpretation of his action. For on that day—according to U.N. Document A/2364, page 9—the Chairman of the U.N. Fifth Committee, Carlos P. Romulo of the Philippines, informed its members on behalf of himself, of President of the General Assembly Lester Pearson of Canada, and of the Secretary General that Mr. Lie "did not bind himself to every argument or every single word contained in the [jurists'] opinion."

It shortly became plain that Mr. Lie didn't bind himself to the opinion. Period. For on April 1, 1953, he rejected its main principle during an intra-mural debate at the 421st Plenary Meeting of the General Assembly, a meeting accorded scant attention by the press because no votes on the Report were taken and no decision was reached.

There, according to U.N. Document A/PV/421, the Secretary General said: "Some delegations have opposed the notion advanced by the Commission of Jurists that special consideration should be given to the host country in determining the employment of its nationals . . . I should like to point out that . . . this is one of the recommendations of the jurists which I did not accept."

Astonishingly, the United States Delegation made no comment on Mr. Lie's remark. It is reliably reported that our Delegation was of the opinion it was not "proper" for the United States to comment on a matter that was *sub judice*, i.e., on a matter in which U. S. citizens were involved in an appeal to the "court," the Administrative Tribunal.

"Apparently straining to be specious," said a realistic-minded member of a Latin American delegation, "the United States fell over backwards."

Strange as that attitude may seem, what is utterly incredible is the fact that after the Fifth Committee discussion, the United States *Mission* to the U.N. did not issue a press release notifying the American people of Mr. Lie's repudiation, and the State Department did not issue a formal protest. To draw the full implications from this fact, it is necessary to understand that American officials and employees of the United Nations *Secretariat* are paid by and responsible to the U.N. Organization itself. But officials and employees of the United States *Mission* to the United Nations are paid by the United States Government and are members of our own State Department. Therefore, in the case of Mr. Lie's action, American diplomats neglected to inform the American public about a matter vitally affecting their national interest and security.

Is it surprising that the United Nations Administration then played a game of follow-the-leader?

In an interview with a U.N. official, September 9, 1953, this writer inquired whether the Legal Department, or Secretary General Lie, or the U.N. Department of Public Information had ever issued to the press or to the President of the United States formal notification that the main principles of the Jurists' Report had been repudiated by the international organization.

"Why on earth would we call attention to it?" the U.N. official said. "Why not just sneak away from it?"

Evidently, this sneaking away was accomplished right under the nose of the United States Delegation while responsible officials in our State Department were taking or pretending to take a catnap.

But regardless whether there was a public disavowal of the Report or merely an intra-mural rejection of it, the fact is that only a month after Mr. Lie was succeeded as Secretary General by Mr. Dag Hammarskjold, there appeared in the *New York Times* under the headline "U.N. CHIEF QUERIES CURB ON AMERICANS" the following account of a remark he made at a U.N. press conference:

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Mr. Hammarskjold said a report by three lawyers whom the former Secretary General Trygve Lie appointed last year to study the personnel question had been "superseded" . . .

"By what?"—the American public has a right to know.

That the Report was superseded is undoubtedly Mr. Hammarskjold's belief. But evidently a large section of the American press misunderstands his view. On September 4, 1953, for example, the *New York Herald Tribune* stated in an editorial on the U.N. and the U. S.:

An eminent group of international jurists has elaborated on the special and peculiar relationship which the U.N. bears to ourselves, the host country in this case; and Mr. Hammarskjold has followed their broad directive.

Infinitely more important, Mr. Hammarskjold's belief that the Jurists' Report has been superseded is evidently not shared by President Eisenhower. For less than a month after Mr. Hammarskjold uttered his passing remark, our President issued an Amendment relating to certain U.S.-U.N. loyalty and security procedures and investigations set forth in Truman's Executive Order 10422, *but President Eisenhower did not rescind or alter the original preamble of the Truman Order* in which three main paragraphs begin with the phrase "WHEREAS THE COMMISSION OF JURISTS HAS ADVISED . . ." and a fourth paragraph states:

Whereas the Secretary General has declared his intention to use the conclusions and recommendations of the opinion of the said Commission of Jurists as the basis of his personnel policy in discharging the responsibilities entrusted to him by the Charter and staff regulations of the United Nations; . . .

Thus the grand finale of this United Nations hocus-pocus with the legal findings of an eminent Commission of Jurists, who were chosen by the U.N. Administration itself, has left the American people off-stage in a dark theatre trying to solve a riddle that has no answer.

On September 11, 1953, this writer was told by an informed legal scholar closely allied with the United Nations:

"Nobody will ever in 2,000 years be able to determine whether or not the Jurists' Report is in force."

III

A LOOK AT THE RECORD

Like the riddle of the Report, there are riddles concerning many aspects of the United Nations Secretariat. Some of them can't be solved. But some of them can be answered—at least from the American point of view—by taking a look at the record.

At the San Francisco Conference on the Organization of the United Nations in 1945, Alger Hiss presided as Acting Secretary General. Looking on him today as a traitor who committed perjury about his activities as a Soviet agent, the American people sometimes forget that Hiss was a brilliant lawyer who apparently exerted extraordinary influence over Secretary of State Stettinius and other top-ranking American and foreign statesmen and diplomats.

What Hiss and some of his associates and the Soviets seem to have aimed at in San Francisco was the adoption of a United Nations Charter suitable for the Kremlin practice of what Communists call "revolutionary parliamentarianism."

Few Americans can define this term; yet for their own protection it ought to be as familiar to them as any household expression. In Communist Party literature, the term is defined as "the use of a legal framework for 'illegal' actions;" i.e., actions deemed illegal in a non-Communist society. But devotees of Anglo-Saxon parliamentary traditions define the Communist term as "the use of a legal framework as a cloak for subversive activities."

The subversion that Communists wish to accomplish in the U.N. is perhaps best described in a Communist pamphlet, "The United Nations," issued in English by The People's Publishing House, Bombay, India, in September 1945. Acting as usual on the precept, "Tell people the truth about what we're going to do—they won't believe it," the Communists told about how and why the Soviet Union joined the U.N., and made the three main points: 1—"Great power unanimity with the right to veto in the Security Council" was insisted on "to prevent the Organization from being used against the Soviet . . . for the Soviet would vote against such action "automatically";

2—"The international peace organization had to be the best possible organization through which . . . the peoples . . . particularly of Britain and the U. S. A." could learn to "fight" capitalism and to "checkmate" their own foreign policy; 3—the "Trusteeship Council" should be used for "liberation from British and American imperialism," and the underdeveloped areas of the world aided "economically, socially and culturally" according to the policy of Joseph Stalin. This policy—as students of Communism know—called for "a single world economic system which is so essential for the final triumph of socialism."

For future achievement of these definite objectives, it was to the Kremlin's best interests that the United Nations should adopt a vague Charter and set up a Secretariat operating under vague rules and regulations.

"Sometimes, when a smart lawyer wants to be really shrewd," said a former deputy U. S. Assistant Secretary of State, "he is intentionally obscure."

Along with many Communists, Socialists and impractical idealists, Alger Hiss—who in 1946 acted as Principal Adviser to the U. S. Delegation at the first session of the U.N. General Assembly in London—seems to have been a master at inducing our government to go along with "planned vagueness."

Certainly, there does not appear to be any record of his having advised the State Department to put up a strong fight against the kind of reasoning embodied in a Secretariat personnel policy that had been decided on at meetings of the Preparatory Commission by American, British and other diplomats who evidently were in what has been described as "a London mental fog."

According to the Summary Record, U.N. Document PC/AB/14, 19 and 20 December 1945, they actually took the position:

It was *common sense* that the [United Nations] staff should, as far as possible, be acceptable to the member governments and also that the Secretary General would often require information regarding candidates from governments or private bodies, but it would be *extremely undesirable to write* into the text *anything* which would give national governments particular rights in this respect . . . [Italics added.]

United States' concurrence in this absurd decision is a perfect example of how the American people got into that kind of United Nations mess which was recently described as "international rhubarb."

In preparing a text, if something is "common sense" then why would it be "extremely undesirable" to write down "anything" specific about it? Understandably, there were certain points best left open for negotiation and discretion. But surely it was not in accordance with grass-roots American tradition for U. S. diplomats and lawyers to agree to the elimination of "anything" conceded to be common sense!

Immediately after we abandoned our national rights in respect to U.S. citizens employed by the Secretariat, we joined with all other members of the Preparatory Commission—the day before Christmas—in presenting to the Soviet Union a gift beyond compare. A U. S. vote was included in the unanimous adoption of the Soviet-proposed United Nations staff rule:

"No persons who have discredited themselves by their activities *in connection with fascism or nazism* should be appointed to the staff of the United Nations organization."*

Since there was no definition of the word "fascism," we thus adopted a rule that could be used to impute guilt by association, through use of the word "connection," to persons who are not Communists or pro-Communists and bar them from U.N. employment. For in Soviet terminology, anybody who is not a pro-Communist is a "fascist."

Minds in a fog, the enthusiastic supporters of the Soviet proposal known as "Rule 56" evidently didn't stop to think that it was in absolute contravention of U.N. Staff Regulation 1.4 which states that members of the Secretariat "are not expected to give up their national sentiments or their political and religious convictions."

Of course, it was desirable not to have a potential Hitler or Mussolini on the U.N. Staff. But in London, it seems, nobody found

* This rule was abrogated by Secretary General Trygve Lie effective January 1, 1953.

it undesirable to employ a potential Joe Stalin in the Secretariat. And since there was no mention of Communism in Rule 56, it left the U.N. Administration's Personnel Department door wide open to the employment of Communist nationals from non-Communist countries.

Naturally, Alger Hiss and Soviet agents in other countries, lost no time in sending a stream of applicants to the U.N.

An Associated Press report from Washington, March 23, 1953, stated:

HISS PICKED AMERICANS FOR U.N. JOBS

A State Department official testified today that Alger Hiss made unofficial reports to the United Nations in 1946 on Americans seeking U.N. jobs.

William L. Franklin, special assistant to the department's security director, told a House judiciary subcommittee that department files show Hiss sent lists of names to U.N. Secretary General Trygve Lie despite a "hands off" policy adopted by then Secretary of State James F. Byrnes.

In 1946 Hiss was Director of the State Department's Office of Special Political Affairs. . . .

Undoubtedly, many of the Red-sponsored applicants were turned away at the U.N. door. But it appears that the cleverest of the American group not only got through, they eventually maneuvered themselves into secure positions at Lake Success, and later rode an escalator all the way to top level positions in the U.N. Headquarters in New York City. Their efforts were twofold: 1—to undermine the morale and subvert the efforts of the Secretariat in which the majority of employees are hardworking, capable and loyal; 2—to engage in worldwide espionage, subversion and dissemination of Red propaganda.

Repeatedly, such high American dignitaries as former Secretary of State Acheson and Mrs. Eleanor Roosevelt have made statements implying there are no secrets at the United Nations, and therefore at the international organization there is neither a reason for conducting espionage nor an opportunity to impair our national security.

In *See Magazine*, November 1952, Mrs. Roosevelt wrote:

One purpose of the U.N. is to gather and distribute information on practically every subject and for the free use of practically anybody. A spy would feel professionally foolish, when people are so eager to tell things.

It is interesting to compare this naive or not so naive statement with the official REPORT OF THE STAFF COMMITTEE, U.N. Document SCC/152 1 December 1952. On page 4 there is the explanation:

The staff regulations provided . . . for transfer of staff within the Secretariat, by which means the few *posts which gave access to secret information* could legitimately be filled, if not already held, by persons whose political beliefs precluded the likelihood of their making improper use of such information. [Italics added.]

This sentence proves, of course, that there is secret information at the United Nations, and that though the employees are "international civil servants" they are human beings who are bound to hold "political beliefs" of one kind or another.

Other documents prove that top U.N. officials deal with extremely important information not to be generally divulged. Official records of discussion in the U.N. Technical Assistance Committee concerning the appointment of an Executive Chairman for the Technical Assistance Board contain references to the "highly confidential" nature of the Chairman's work, and to his monthly "private" conferences with the directors of U.N. specialized agencies, including the managing director of the International Monetary Fund. This Fund handles assets of between 7 and 8 billion dollars, and its longtime Secretary, Virginius Frank Coe, was dismissed only in December 1952, a few days after he refused to tell the McCarran Committee whether he was at that time a member of a Soviet espionage ring.

The present Chairman of the Technical Assistance Board, Mr. David Owen of the United Kingdom, seems to have exercised extremely poor judgment about the likelihood whether or not a person working under his direction would make proper use of information. In 1952, when Mr. Owen was U.N. Assistant Secretary General for

Economic Affairs, he had as a principal assistant Mr. David Weintraub, an American whose testimony before the Senate Internal Security subcommittee revealed:

. . . that he was the person responsible for the employment within the United Nations of five officials who subsequently refused on Constitutional grounds to tell the subcommittee whether they were Communists and in two cases, involved in espionage.

Other of Mr. David Owen's American assistants—all of whom invoked the 5th Amendment before the subcommittee—were:

1. Mr. Joel Gordon: refused to answer: "Are you now engaged in any subversive activities against the United States Government?"
2. Mr. Sidney Glassman: refused to answer whether he was a member of the Communist Party when he was "employed by the United States Government."
3. Mr. Herbert S. Schimmel: refused to answer: "Did you ever attend a Communist meeting with Mr. Weintraub?"
4. Mrs. Marjorie Zap: refused to answer: "as to this time you are a member of the Communist Party?"
5. Mr. Irving Kaplan: refused to answer: "virtually all questions relating to Communist activity, subversion, and espionage."

Subsequent to Mr. Kaplan's refusals in 1952, Mr. Owen gave him a letter of reference for future employment. When Mr. Kaplan's attorneys appeared on his behalf before the U.N. Administrative Tribunal in July 1953, they quoted Mr. Owen's letter which states in part that during 52 months Mr. Kaplan:

. . . maintained a high standard of professional competence as economist engaged upon analysis of factors influencing the economic

development of under-developed countries. . . . *he made a valuable contribution* in the organization of basic research, the analysis of the material, as well as *in the formulation of the conclusions*. . . . Mr. Kaplan's accurate analysis of economic questions of this type enabled him to render very useful assistance in the work of the Department of Economic Affairs. [Italics added.]

In fairness to Mr. Owen, however, it must be said that his seeming sponsorship of, indifference to, or lack of knowledge about, the real background of some American employees in his department at the United Nations merely was typical of other high U.N. officials' attitude.

In July and October 1948, the *New York Times* and the *New York Herald Tribune* published reports of testimony given by a State Department official and other witnesses before a Senate Subcommittee concerning possible subversive activities and espionage at the United Nations. But, as was pointed out by attorneys for the so-called "Red Eleven" at hearings before the Administrative Tribunal:

Initially, the attacks met with vigorous opposition from high administrative officers of both the United Nations and the U. S. Government. The responsible American press also tended to discount the charges as unfounded and irresponsible.

A press release from the U.N. Department of Public Information dated 23 July 1949 (SG/11) stated:

Acting Secretary-General Byron Price today made the following statement with regard to a release issued by the Senate Judiciary Subcommittee covering testimony of an unnamed witness with respect to personnel policies in the U.N. Secretariat:

"This is the nuttiest story I have heard yet.

"I am in a position to know that the charges relating to the administration policies of the U.N. are fantastically untrue. I am sure that no fair-minded person will attach significance to the statement of a mysterious so-called 'official' who attempts wholesale character assassination of his colleagues but refuses to give his name."

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In a statement to the U.N. staff (Document SG/13), Mr. Price said:

Some of the recent charges have involved vague hints or open allegations of espionage. . . . It is part of his [the Secretary General's] responsibility to reject attempted terrorization by gossips and marplots . . .

Four days later, the U.N. Department of Public Information released the text of a letter to Secretary of State Dean Acheson from Mr. Price, who wrote:

I am compelled to point out that the internal administration of the Secretariat is the responsibility of the Secretary General and the General Assembly.

If the Secretary General were to be answerable to Committees of the national legislatures, all possibility of the successful existence of the UN as an international organization would be destroyed.

At the end of his letter to the Secretary of State of the United States, Mr. Price—an American—said he would appreciate knowing the views of "your government." Probably Mr. Price expressed himself according to customary diplomatic protocol; but he might have written "the United States Government" or "the American Government." At any rate, it is illuminating to interpret the term "your government" in relation to the Commission of Jurists' view that "it is equally clear that the United Nations is in no sense a super state. It has no sovereignty and can claim no allegiance from its own officers or employees. Membership of its staff, in our opinion, in no way abrogates, limits, or qualifies the loyalty a person owes to the state of which he is a citizen."

In view of the confused attitude taken by many high ranking U.N. officials toward the real status of Secretariat civil servants and their loyalties and obligations, informed sources were not at all surprised when an article by Craig Thompson appeared in the *Saturday Evening Post*, November 1951, stating there was strong evidence that a group of Communist wreckers had penetrated the U.N. staff.

One of the persons active in U.N. staff affairs was a Canadian,

Mr. Hugh Lukin Robinson. And evidently the wrecking activities in the staff grew so acute that Secretary General Trygve Lie said on November 26, 1951: "If the staff in New York want to make trouble the issue will be a simple one, it will be a question of either loyalty to Mr. Robinson or loyalty to me."

That same month, the term of Mr. Robinson's contract with the United Nations was completed. It was not renewed by Mr. Lie, who dismissed Robinson on grounds of "considerations of suitability." Mr. Robinson—described in the press as a "pro-Communist"—protested against his dismissal and retained counsel to present his case to the United Nations Administrative Tribunal. In Geneva during the summer of 1952, the tribunal awarded Robinson \$3,990 as salary due from the expiration of the contract till its decision, \$2,000 damages and \$1,000 legal costs.

Everywhere, the Communist press hailed this decision as a great victory for "progressives" and as a defeat for "witch-hunters and red-baiters." Though Robinson is not an American, a large part of the leftwing and "liberal" press in Europe and Asia used the judgment rendered in his case (presented to the Tribunal on his behalf by Mr. Paul J. Kern, who was Mayor LaGuardia's Civil Service Commissioner) as a hate-America weapon to try to discredit United States laws, government agencies, Congressional bodies and private citizens combating Communism.

While the Robinson case was *sub judice*, and after Secretary General Lie had dismissed from the United Nations several American employees whose Communist affiliations were publicly exposed by the Senate Internal Security subcommittee, the internationally known "conservative" London magazine the *Economist* carried in its July 12, 1952 issue an article, "Staff Troubles in UNO," signed "By a Correspondent" who wrote that our Federal Bureau of Investigation "in its pursuit of Communist sympathizers beats any bush for fresh game." The *Economist* further declared: "Since a U. S. District Attorney successfully prosecuted Alger Hiss and was rewarded with a judgeship, the road for the ambitious in the Justice Department has been clearly marked."

In 1953, the foregoing statements were quoted in a joint legal brief presented to the United Nations Administrative Tribunal on behalf of nineteen of the twenty-one dismissed 5th Amendment American U.N. employees.

The inclusion of this material—described as “scurrilous” by the U.N. Legal Department—appears to have been in full conformity with the Communist Party line. The fact is that from beginning to end, the conduct of more than a score of 5th Amendment American U.N. employees and their attorneys—before the Federal Grand Jury, the Senate subcommittee, and the U.N. Administrative Tribunal—seems to have been strictly in line with directives in the Communist pamphlet “Under Arrest!” issued many years ago by the subversive International Labor Defense, 80 East 11th Street, New York City.

“Even though capitalist law makes what you have done a crime,” declared the Communist Party, “you must plead Not Guilty.”

It further instructed: “You either answer your own way, or not at all. MAKE THE COURT YOUR FORUM!”

It seems reasonable to conclude that the twenty-one 5th Amendment U.N. Americans went before the Administrative Tribunal of the United Nations—its final legal authority—to make the Court of that international body a forum for a world-wide propaganda campaign against the United States.

* * *

IV

THE DECISION

On the afternoon of April 15, 1953, the Administrative Tribunal of the United Nations held preliminary hearings at U.N. Headquarters in New York City to narrow the legal issues relating to the appeals from dismissal in the Secretariat of twenty-one 5th Amendment Americans.

Ten of them had held temporary or temporary-indefinite U.N. contracts and were subject to dismissal by the Secretary General at his sole discretion “in the interest of the United Nations.” Eleven of

the Americans held permanent U.N. employment contracts with right of tenure under the U.N. Charter and the Staff Regulations adopted by the General Assembly. In the legal briefs, the employees are described as "the Applicants," and they appealed as a result of action taken by the U.N. Secretary General who is described as "the Respondent."

Adopted by the General Assembly in 1948, the Statute establishing the United Nations Administrative Tribunal declares it "shall be composed of seven members, no two of whom may be nationals of the same State. Only three shall sit in particular case. [Plus an alternate member.]" Article 10 of the Statute orders:

1. The Tribunal shall take all decisions by a majority vote.
2. The judgments shall be final and without appeal.
3. The judgments shall state the reasons on which they are based.

Regrettably, the United States is not a current member of the U.N. Administrative Tribunal which is at present composed of representatives from the United Kingdom, France, Ecuador, Egypt, Sweden, Czechoslovakia and Iran. Thus no American was even eligible to render judgment in a United Nations *cause célèbre* concerning twenty-one United States citizens. And it is extremely interesting to note that the Tribunal members who rendered judgment in this case in 1953 also judged the Lukin Robinson case a year earlier. These members were Madame Paul Bastid of France, President of the Tribunal; Mr. Sture Petren of Sweden, Vice-President; and Lord Lloyd Crook, Vice-President, who is also a veteran British trade union leader. The alternate member in 1953 was Omar Loutfi, of Egypt.

Prior to the opening of the preliminary hearings, the Tribunal had addressed several questions to the Applicants and to the Respondent concerning the briefs already submitted. The brief for the Respondent was written by C. A. Stavropoulos, Principal Director in charge of the Legal Department, and Counsel: Bruno Schachner, Axel Serup and Gurdon W. Wattles. The briefs for the Applicants were written by Andrew D. Weinberger, Frank J. Donner, Arthur Kinoy, Leonard

B. Boudin, and Morris J. Kaplan. The last four belong to the National Lawyers Guild, an organization currently being investigated for possibility of subversion by United States Attorney General Brownell.

On the morning of April 16th, Mr. Bruno Schachner, Counsel for the Respondent [the U.N. Secretary General] (U.N. Document AT/PV.24) answered the first question put by the Tribunal in which the final sentence was: "Does the fact that the reply [Secretary General's] omits any mention of the host State mean that the Respondent does not adopt that theory?"

In his reply to this question, Mr. Schachner, an American, stated: "The Respondent *has not relied* in these cases *on the theory of the three jurists concerning the special rights of the host State.*" Then he declared that the problems in these cases would be the same if they related to a member state which was not the host country, but later said: "The Tribunal also inquired concerning our position as regards the theory of the three jurists about the special relation which the United Nations has to the host country. We feel that, for the purposes of these particular cases, *it is not necessary to consider the special position of the host country.*" Then, in a final statement concerning the Tribunal's first question, Mr. Schachner said: "However, I repeat, for the purposes of these particular cases it does not seem to us to be important to go into the question of the relation between the United Nations and the host country."

Thus, at the outset of the case, the U.N. Legal Department rejected the very foundation of the Jurists' Report on which rested U. S. Presidential Executive Order 10422, presumably based on the State Department's understanding that "the Secretary General has accepted and will be governed by the recommendations contained in the Jurists' Report."

Mr. Donner, counsel for the Applicants, immediately declared: "Now this, of course, startles me in a way. This is a shocking revelation to me in the light of the fact that I understood that the Secretary General precipitately acted on one sorry day in December of 1952 against my clients on the thesis of the three Jurists as expressed in their report issued at the invitation of the Secretary General. If one consults General Assembly Document A/2364 . . . we find that the

Jurists made this statement: 'The difficulties to which your questions relate *all arise* out of the peculiar relationship which must exist between an international body such as the United Nations and the Member State within whose borders that international body works' (Italics added.)

Then Mr. Boudin, counsel for the Applicants, affirmed: "The 'host' concept is, of course, the basis of the jurists' report. . . . it's the heart of the report. . . . the 'host' concept is also part of the action taken by Mr. Lie, and as late as December 3, 1952, in his letter to Mr. Austin [Ambassador Warren R. Austin of the U.S. Mission]. . . . So we see that only at the point where Counsel . . . has arrived here to disclaim the 'host country' concept, do we find somebody taking that particular position contrary to the actions that were previously taken."

Next Mr. Donner said on behalf of the Applicants: "One does not change one's theory unless one loses one's faith in the theory which one discards."

The discussion on this point continued nearly all morning on April 16th. That afternoon, Madame Bastid announced that the Tribunal would proceed to Question V. posed by the Tribunal to the Respondent. The core of this question is: "He [the Secretary General] maintains that the Applicants by refusing before the Senate Subcommittee to reply to certain questions concerning their connection with the Communist Party have incurred the suspicion that they have committed crimes against the security of the United States. By placing themselves in this position they have laid themselves open to charges of 'unsatisfactory services' within the meaning of Regulation 9.1 (a) of the Staff Regulations and 'serious misconduct' within the meaning of Regulation 10.2. . . ."

Commenting on Question V, Mr. Donner, counsel for the Applicants, quoted as follows from Secretary General Trygve Lie's speech of 10 March 1953, document SG/281:

Although the Jurists recommended dismissal, I decided that the staff members concerned should be given a second chance. First of all, I notified the entire staff of my acceptance of the recommendation of the Jurists in this respect. Then I notified the staff members

concerned that I would be compelled to dismiss them for a fundamental breach of the obligations laid down in Staff Regulation 1.4 unless, within three days, they informed me that they had notified the appropriate U.S. authorities of their intention to withdraw the plea of privilege and answer the pertinent questions put to them. This they refused to do. *Their refusal of my request constituted, in my opinion, a clear case for dismissal for misconduct under Article 10 of the Staff Regulations. Nevertheless, I chose a less severe method of termination, one that would entitle them to the normal indemnities and severance pay, so that they might have a less difficult time in the transition period while seeking other employment. [Italics added.]*

It was not necessary, of course, for Mr. Donner to comment on this speech. He confined himself to the single sentence: "That is all I have to say on this question."

The American people might inquire, however, precisely why Secretary General Lie was so eager to ease the difficult time that U.N. American employees dismissed for *misconduct* would have in finding future employment.

Mr. Schachner made a very long statement interpreting U.N. Staff Regulations and rules, remarking: "I think we are still in the exploratory stages of the law pertaining to international civil servants." Later he said that the peculiar problems concerning staff members who conceivably may be held to have been dismissed summarily "are better described in our brief."

On page 30, in the official United Nations STATEMENTS AND BRIEFS FOR THE RESPONDENT, there appear the following opinions:

It needs no lengthy exposition to prove that the violation of a fundamental obligation constitutes misconduct within the meaning of Article X. . . . Again, it is obvious that the Applicants' conduct amounts to 'serious misconduct.' Any action which shows a staff member to be unworthy of trust and reflects on the United Nations as a whole is obviously serious, and misconduct. *And while ordinarily the termination indemnity is not payable on dismissal for "serious misconduct,"* the Applicants are certainly not in a position to complain because they received payments to which they might not have been entitled.

The public interest imperatively called for the immediate dismissal of the Applicants. . . . Under these circumstances the Secre-

tary General invoked all of his powers, but . . . he *resolved all doubts in favor of the Applicants and accorded them the treatment most favorable to them*. It would be absurd to urge that this *act of grace* estops him from relying on his power of *summary dismissal* to justify the action which he took." [Italics added.]

It is enlightening to compare the foregoing legal view with the official document GENERAL ST/AFS/SGB/94, 1 December 1952: Chapter X title "Disciplinary Measures, Regulation 10.2: The Secretary General may impose disciplinary measures on staff members, whose conduct is unsatisfactory. He may summarily dismiss a member of the staff for serious misconduct. Rule 110.3(b) *Except in cases of summary dismissal*, no staff member serving at Headquarters shall be subject to disciplinary measures until the matter has been referred for advice to the Joint Disciplinary Committee:

Termination Indemnity Annex III: (d)
No indemnity payments shall be made to: A staff member who is summarily dismissed."

In view of the foregoing, it was to be expected that the Administrative Tribunal would declare concerning several of the applicants' cases as it did on September 1, 1953: (document AT/DEC/32, page 9)

The nature of serious misconduct appeared so disputable to the Secretary General that he granted termination indemnities, which are expressly forbidden by the Staff Regulations (Annex III) in cases of summary dismissal.

It was also to be expected that after the U.N. Legal Department abandoned the "host country" concept, the Tribunal would not recognize the special relationship between the United Nations and the United States, even though it was emphasized in the Commission of Jurists' Report. As a result, the Tribunal appears to have reached the conclusion that it was also unnecessary to pay special attention to the Constitution of the United States. Therefore those persons who have carefully studied the record of the preliminary hearings before the Tribunal did not find it at all surprising that its members felt—according to the *New York Times*—"that the claim of privilege

[5th Amendment] was not sufficient reason in itself to warrant summary dismissal."

Nevertheless, it seems clear that in addition to the U.N. Secretary General and the U.N. Legal Department, the members of the Administrative Tribunal were inclined to accord the dismissed Americans "the treatment most favorable to them." For example, it appears the Tribunal gave the highest award of \$40,000 damages to Jack Sargeant Harris, who seems to be—in the opinion of highly informed sources—the "worst offender." Harris' own lawyer stated that during World War II: "... he [Harris] was entrusted with various secret missions and was designated special assistant to the U. S. Minister to the Union of South Africa in charge of American Intelligence in that country." Before the Senate Subcommittee, however, Harris refused to state whether he was a member of the Communist Party while occupying a post of such high trust affecting the security of the United States.

The fact that Secretary General Dag Hammarskjold chose to award indemnification to four of the eleven 5th Amendment Americans, instead of reinstating them, is not really relevant to the main issues at stake as a result of the Administrative Tribunal's decision of September 1, 1953. According to U.N. regulations adopted by the General Assembly, the Secretary General always has had the right to exercise his personal discretion in the matter of indemnification rather than reinstatement of dismissed U.N. Personnel.

Concerning the entire matter of U.S.-U.N. personnel security relations, the *London Times* reported on December 2, 1952, that when Secretary General Trygve Lie consulted the Commission of Jurists he "raised some questions that might better have been left unformulated in the world as it is today."

A different view, however, was presented to the Administrative Tribunal by the attorneys for the Applicants. Their legal brief states:

... the issues which are posed by these cases are indeed far more weighty than the controversies which brought them into being. It is not an exaggeration to say that involved here are the

integrity of the principles upon which the meaningful function and future of the United Nations depends.

This writer submitted to an eminent American attorney for analysis all the material presented in this article. His legal opinion concerning the present situation regarding United States-United Nations personnel security relations today is:

Among whatever conclusions the reader may come to as a result of his own interpretation of the material herein presented, one conclusion seems inescapable:

As the United Nations organization now interprets its Charter and its rights, it is entitled to employ, for work within the City of New York and elsewhere, Americans who are disloyal to the United States or subversive in whatever degree, and to cloak such employees with whatever immunities are granted to United Nations employees.

In a special cable, the *New York Times* reported from Geneva, September 15, 1953:

The executive committee of the Federation of International Civil Servants Associations has recommended that no international civil servant should give information "prejudicial to any international civil servant" to the police of any national government.

This recommendation . . . is directed specifically to inquiries made by the United States Federal Bureau of Investigation among officials of the United Nations. Seven thousand to 8,000 employees of the United Nations and its agencies are members of the federation.

Thus it appears that the findings of a New York Grand Jury on evidence presented by former Assistant U.S. Attorney Roy M. Cohn, and the findings of the Senate Internal Security Subcommittee with Robert Morris as Chief Counsel, and the Executive Order of ex-President Truman, January 9, 1953, and the Amended Executive Order of President Eisenhower, June 2, 1953, all may be—from the United Nations' point of view—null and void.

As it is stated in the *Report on Activities of United States Citizens*

Employed by the United Nations, issued January 2, 1953 by the distinguished Senators Pat McCarran, James O. Eastland, Herbert R. O'Connor, Willis Smith, Homer Ferguson, W. E. Jenner and Arthur V. Watkins:

"The people of America have a right to know the facts with regard to this matter."

* * *

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